KUMAR JASPAL QUAH & AISHAH

v.

WEMBLEY INDUSTRIES HOLDINGS BHD

HIGH COURT MALAYA, KUALA LUMPUR
KL REKHRAJ J
[COMPANY WINDING-UP NO: D6-28-11-1998]
12 FEBRUARY 1998

LEGAL PROFESSION: *Remuneration - Costs - Whether solicitor can sue for fees - Whether leave of court must be obtained before pursuing matter - Legal Profession Act 1976, s. 124*

The petitioner, a law firm, filed a petition against the respondent for the recovery of fees due to it. The petitioner issued a statutory notice, under s. 218 of the Companies Act 1965, to inform the respondent of the sum due to it. The respondent neglected and failed to secure or compound the said notice by failing to challenge the said sum under the statutory notice. The respondent then filed a notice of motion to strike out the said petition and also applied that the petitioner be injuncted from pursuing the action further.

Held:

[1] Undoubtedly, the court has the discretionary power *vide* s. 222 of the Legal Profession Act 1976 ('the LPA') to restrain proceedings like these; but only if and provided there are merits in the application touching on the dispute. Parliament has given a creditor, who cannot get paid, an absolute right to present his petition against a company which has not only refused to pay him, but is in a state of statutory insolvency after having failed to comply with a statutory notice.

[2] Section 124 of the LPA bars an advocate & solicitor from suing for costs unless the leave of the court has been obtained.

[3] The petitioner had not satisfied the court that it had complied with s. 124 of the LPA in obtaining the leave of the court. Disregarding the merits or demerits of the matter, the present petition had to be dismissed on the sole ground that it had been prematurely presented.

[Petition dismissed with costs.]

Legislation referred to:
Companies Act 1965, ss. 218, 221, 222
Legal Profession Act 1976, ss. 124, 126

For the petitioner - Vijay Kumar; M/s Kumar Jaspal Quah & Aishah
For the respondent - Loh Siew Cheang; M/s Cheang & Ariff

Reported by Bhawani Mano

JUDGMENT

KL Rekhraj J:

The petitioners are a law firm carrying on their practice in Kuala Lumpur; as advocates and solicitors under the Legal Profession Act 1976 (Act 166) and Rules; and as such filed a petition against the respondents on 7 January 1998, in the recovery of their fees due to them as at 25 November 1997, in the sum of RM49,730.70, on four Bills, three of which are dated 30 August 1995; and the other dated 1 September 1995.

The petitioners issued a statutory notice under s. 218 of the Companies Act 1965 by putting the respondents on notice "that pursuant to s. 126 of the Legal Profession Act 1976; their said Bills have become absolute (due) after a period of one (1) year and are not subject to taxation; and that unless the said sum (under the Bills) together with the interest is paid within twenty-one (21) days from the date of receipt of the said notice; winding-up proceedings may be taken against the respondents".

The respondents not only neglected but failed to secure or compound the said notice by failing to challenge the said Bills under the statutory notice; to the reasonable satisfaction of the creditor; and where-upon on the run of the time of twenty-one (21) days; the deeming provision; that the company is unable to pay its debt was activated; and the petitioners then were at liberty to present their petition; with the discretionary power in the court, under s. 221 of the Companies Act at the hearing of the petition to either dismiss it or adjourn the same conditionally or make any interim or other order as it may think fit.

The respondents have now filed a notice of intention to oppose the petition; and in this direction filed a notice of motion dated 7 February 1998 supported by an affidavit of Mr. Tang Yow Sai – director of the respondent company for an Order that not only the petition dated 19 December 1997, filed herein be struck off under the **inherent jurisdiction of the court** on the ground that it is an abuse of the process of the court; but that the petitioner be injuncted by its directors, officers, agents and/or otherwise howsoever be restrained

from further prosecuting the petition and/or taking and/or continuing with any steps thereunder until the final disposal of the application; and/or such further and/or other consequential reliefs. No doubt the court has the discretionary power under s. 222 of the said Act to restrain such act or proceedings; but only if and **provided there are merits** in the application touching on the dispute; as Parliament had given a creditor, who cannot get paid; an absolute right to presentation of its petition against the company which not only refuses to pay him; but is in a state of statutory insolvency after having failed to comply with the **statutory notice** under the Act.

Therefore, for the petitioners to succeed on their petition, all that is required of them is to prove that the statutory notice has been made; and its non-compliance by respondents by failing to countermand upon it. The affidavit of Mr Tan in opposing the petition is not worth the salt to merit. As it states:

(a) I have been advised by the respondent's solicitors and verily believe that the ground for the petition is without legal foundation. I deny that the respondent is indebted to the petitioners for the sum as stated in the notice of demand dated 25 November 1997 and shown as exh. "VKN1" in the petition and referred to in para. 6 of the petition.

(b) The letter of demand accompanying the said notice of demand, which is also exh. as "VKN1", claimed *inter alia*, interest calculated on top of the service tax payable. I have been advised by the respondent's solicitors and verily believe that this is wrong in law. I respectfully state that the respondent is not indebted to the petitioners in the manner as claimed. In the circumstances, the basis of the petition, ie, the purported deemed insolvency of the respondent, is without foundation.

(c) The respondent is a public company which is financing the construction of Plaza Rakyat ('the project'), a privatised project of the Government of Malaysia. The respondent has a paid-up capital of RM144,475,000 and is currently undergoing a rights issue of approximately RM476,000,000 to raise capital. Part of the raising of capital is to finance the construction of the said project. A key component of the project aforesaid is a major inter-change for the light rail transport. The respondent is not insolvent and is able to pay its debts as and when they fall due.

(d) This is not a case, I respectfully state in which the respondent can at all be deemed insolvent

(e) By reason of the matters aforesaid, I have been advised by the respondent's solicitors and verily believe that the petition is an abuse of this Honourable Court and ought to be struck out.

Be that as it may; and without going into the merits or demerits of the petition; the petitioners petition *has to be dismissed on the only ground; that it has been prematurely presented; as s. 124 of the said Legal Profession Act 1976, bars an advocate and solicitor to sue for costs unless the leave of the court has first been obtained. The section reads "Except as authorised by this Act, no advocate and solicitor shall without the leave of the court commence or maintain any action for the recovery of any costs due for any business done him* until the expiration of one month after he has delivered to the party to be charged therewith, or sent by post to, or left with him at, his office or place of business, dwelling house or last known place of above, **a bill of costs,**" ...

As the petitioners have not satisfied this court of their having complied with the requirements of s. 124 of the Legal Profession Act; in their having obtained the leave of the court; the said petition as filed is premature, and is accordingly struck off with costs.